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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

11 **Brian Whitaker**

Case No.

12 Plaintiff,

13 v.  
14  
15 **Liquid Experience, Inc.**, a  
16 California Corporation  
17 Defendants.

Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act

18 Plaintiff Brian Whitaker complains of Liquid Experience, Inc., a  
19 California Corporation; and alleges as follows:  
20  
21

**PARTIES:**

22 1. Plaintiff is a California resident with physical disabilities. He is  
23 substantially limited in his ability to walk. He suffers from a C-4 spinal cord  
24 injury. He is a quadriplegic. He uses a wheelchair for mobility.

25 2. Defendant Liquid Experience, Inc. owned Liquid Experience located at  
26 or about 1589 Haight St., San Francisco, in September 2021.

27 3. Defendant Liquid Experience, Inc. owns Liquid Experience ("Store")  
28 located at or about 1589 Haight St., San Francisco, California, currently.

1       4. Plaintiff does not know the true names of Defendants, their business  
2 capacities, their ownership connection to the property and business, or their  
3 relative responsibilities in causing the access violations herein complained of,  
4 and alleges a joint venture and common enterprise by all such Defendants.  
5 Plaintiff is informed and believes that each of the Defendants herein is  
6 responsible in some capacity for the events herein alleged, or is a necessary  
7 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
8 the true names, capacities, connections, and responsibilities of the Defendants  
9 are ascertained.

10

11       **JURISDICTION & VENUE:**

12       5. The Court has subject matter jurisdiction over the action pursuant to 28  
13 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
14 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

15       6. Pursuant to supplemental jurisdiction, an attendant and related cause  
16 of action, arising from the same nucleus of operative facts and arising out of  
17 the same transactions, is also brought under California's Unruh Civil Rights  
18 Act, which act expressly incorporates the Americans with Disabilities Act.

19       7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
20 founded on the fact that the real property which is the subject of this action is  
21 located in this district and that Plaintiff's cause of action arose in this district.

22

23       **FACTUAL ALLEGATIONS:**

24       8. Plaintiff went to the Store in September 2021 with the intention to avail  
25 himself of its goods or services motivated in part to determine if the  
26 defendants comply with the disability access laws.

27       9. The Store is a facility open to the public, a place of public  
28 accommodation, and a business establishment.

1       10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
2 to provide wheelchair accessible sales counters in conformance with the ADA  
3 Standards as it relates to wheelchair users like the plaintiff.

4       11. The Store provides sales counters to its customers but fails to provide  
5 wheelchair accessible sales counters.

6       12. A couple of problems that plaintiff encountered was that the sales  
7 counter was too high and there was no lowered portion of the sales counter  
8 suitable for wheelchair users. There was no section that was 36 inches in  
9 height or less. What is more, the front of the sales counter was obstructed by  
10 merchandise and displays placed there by the defendants.

11       13. Plaintiff believes that there are other features of the sales counter that  
12 likely fail to comply with the ADA Standards and seeks to have fully compliant  
13 sales counters for wheelchair users.

14       14. On information and belief, the defendants currently fail to provide  
15 wheelchair accessible sales counters.

16       15. The failure to provide accessible facilities created difficulty and  
17 discomfort for the Plaintiff.

18       16. These barriers relate to and impact the plaintiff's disability. Plaintiff  
19 personally encountered these barriers.

20       17. As a wheelchair user, the plaintiff benefits from and is entitled to use  
21 wheelchair accessible facilities. By failing to provide accessible facilities, the  
22 defendants denied the plaintiff full and equal access.

23       18. The defendants have failed to maintain in working and useable  
24 conditions those features required to provide ready access to persons with  
25 disabilities.

26       19. The barriers identified above are easily removed without much  
27 difficulty or expense. They are the types of barriers identified by the  
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous  
2 alternative accommodations that could be made to provide a greater level of  
3 access if complete removal were not achievable.

4 20. Plaintiff will return to the Store to avail himself of its goods or services  
5 and to determine compliance with the disability access laws once it is  
6 represented to him that the Store and its facilities are accessible. Plaintiff is  
7 currently deterred from doing so because of his knowledge of the existing  
8 barriers and his uncertainty about the existence of yet other barriers on the  
9 site. If the barriers are not removed, the plaintiff will face unlawful and  
10 discriminatory barriers again.

11 21. Given the obvious and blatant nature of the barriers and violations  
12 alleged herein, the plaintiff alleges, on information and belief, that there are  
13 other violations and barriers on the site that relate to his disability. Plaintiff will  
14 amend the complaint, to provide proper notice regarding the scope of this  
15 lawsuit, once he conducts a site inspection. However, please be on notice that  
16 the plaintiff seeks to have all barriers related to his disability remedied. See  
17 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
18 encounters one barrier at a site, he can sue to have all barriers that relate to his  
19 disability removed regardless of whether he personally encountered them).

20

21 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
22 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
23 Defendants.) (42 U.S.C. section 12101, et seq.)

24 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
25 again herein, the allegations contained in all prior paragraphs of this  
26 complaint.

27 23. Under the ADA, it is an act of discrimination to fail to ensure that the  
28 privileges, advantages, accommodations, facilities, goods and services of any

1 place of public accommodation is offered on a full and equal basis by anyone  
2 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
3 § 12182(a). Discrimination is defined, inter alia, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,  
5 or procedures, when such modifications are necessary to afford  
6 goods, services, facilities, privileges, advantages, or  
7 accommodations to individuals with disabilities, unless the  
8 accommodation would work a fundamental alteration of those  
9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is  
11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
12 defined by reference to the ADA Standards.
- 13 c. A failure to make alterations in such a manner that, to the  
14 maximum extent feasible, the altered portions of the facility are  
15 readily accessible to and usable by individuals with disabilities,  
16 including individuals who use wheelchairs or to ensure that, to the  
17 maximum extent feasible, the path of travel to the altered area and  
18 the bathrooms, telephones, and drinking fountains serving the  
19 altered area, are readily accessible to and usable by individuals  
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 24. When a business provides sales counters, it must provide accessible  
22 sales counters.

23 25. Here, accessible sales counters have not been provided in conformance  
24 with the ADA Standards.

25 26. The Safe Harbor provisions of the 2010 Standards are not applicable  
26 here because the conditions challenged in this lawsuit do not comply with the  
27 1991 Standards.

28 27. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily  
2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 28. Here, the failure to ensure that the accessible facilities were available  
4 and ready to be used by the plaintiff is a violation of the law.

5

6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
7 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
8 Code § 51-53.)

9 29. Plaintiff repleads and incorporates by reference, as if fully set forth  
10 again herein, the allegations contained in all prior paragraphs of this  
11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
12 that persons with disabilities are entitled to full and equal accommodations,  
13 advantages, facilities, privileges, or services in all business establishment of  
14 every kind whatsoever within the jurisdiction of the State of California. Cal.  
15 Civ. Code § 51(b).

16 30. The Unruh Act provides that a violation of the ADA is a violation of the  
17 Unruh Act. Cal. Civ. Code, § 51(f).

18 31. Defendants’ acts and omissions, as herein alleged, have violated the  
19 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
20 rights to full and equal use of the accommodations, advantages, facilities,  
21 privileges, or services offered.

22 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
23 discomfort or embarrassment for the plaintiff, the defendants are also each  
24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
25 (c).)

1                   **PRAYER:**

2                   Wherefore, Plaintiff prays that this Court award damages and provide  
3 relief as follows:

4                   1. For injunctive relief, compelling Defendants to comply with the  
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
6 plaintiff is not invoking section 55 of the California Civil Code and is not  
7 seeking injunctive relief under the Disabled Persons Act at all.

8                   2. For equitable nominal damages for violation of the ADA. See  
9 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)  
10 and any other equitable relief the Court sees fit to grant.

11                  3. Damages under the Unruh Civil Rights Act, which provides for actual  
12 damages and a statutory minimum of \$4,000 for each offense.

13                  4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
14 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

15                  Dated: September 30, 2021

16                  CENTER FOR DISABILITY ACCESS

17                  By: \_\_\_\_\_  
18                  

19                  Amanda Seabock, Esq.  
20                  Attorney for plaintiff